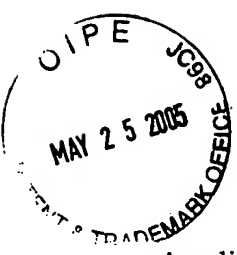


IFW/SAC  
#



PATENT  
3156-0119P

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Cudney et al. Conf.: 6366  
Appl. No.: 10/665,601 Group: 1771  
Filed: September 22, 2003 Examiner: J. Guarriello  
For: CUSHIONING PADS AND THE FORMATION OF  
CUSHIONING PAD

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 C.F.R § 1.47(b)

**Mail Stop Petition**

May 25, 2005

Commissioner for Patents  
PO Box 1450  
Alexandria, VA 22313-1450

Sir:

In response to the Decision Refusing Status dated February 28, 2005, the period for response having been extended one (1) month to May 28, 2005, this REQUEST FOR RECONSIDERATION is for Phoenix Performance Products, Inc. to make the application on behalf of themselves and the non-signing inventors, Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH.

**1. Background**

A decision Refusing Status under 37 CFR §1.47(b), mailed on February 28, 2005, dismissed Applicants' Request for reconsideration filed on February 17, 2005. That decision required Applicants to provide sufficient proof that a copy of the instant application was sent to the non-signing inventors at their last known address. In this regard, the enclosed Revised Statement of Facts in Support of Filing on Behalf of Non-Signing Inventors, states that a true copy of this Application, a new declaration and a letter requesting that the declaration

05/26/2005 JAD01 00000036 10665601 60.00 0P  
01 FC:2251

be signed by the named inventors was sent to the last known address of the named inventors on April 28, 2005 but that a signed declaration was not returned to the sender. Also attached hereto is a copy of the cover of the envelope in which the aforementioned application, declaration and letter requesting that the declaration be signed was sent. The envelope clearly indicates that it was not delivered to the named inventors because the address was unknown to the delivering entity, United Parcel Service.

The Decision on Petition also requires submission of a Declaration that complies with 37 CFR §1.63 and §1.64. Applicants also enclose a Declaration for the instant Application that they believe fully complies with 37 CFR §1.63 and §1.64.

## **2. Declaration**

Attached is a Declaration listing Mr. Douglas J. CUDNEY's and Ms. Karen BREITBACH's name, residence, citizenship, and last known address, and signed by Mr. David Anderson, President & CEO of Phoenix Performance Products, Inc.

## **3. Proof of Proprietary Interest**

Attached is a copy of a worldwide Assignment document, in which Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH agree in writing to assign their rights in the present invention to Phoenix Performance Products, Inc. This assignment was recorded at reel 010311 / frames 0363-0365 in the records of the USPTO.

Moreover, Mr. Cudney and Ms. Breitbach signed and dated a declaration on September 30, 1999. However, the declaration was technically defective due to Ms. Breitbach listing her post office address as her residence (hence not listing her residence), and Mr. Cudney not listing his residence, post office address or citizenship.

**4. Proof of the Pertinent Facts**

Attached is a Statement of Facts in Support of Filing on Behalf of Non-signing Inventors. The statement is made by Mr. David H. Anderson and concerns the pertinent facts regarding Mr. Douglas J. CUDNEY's and Ms. Karen BREITBACH's refusal to sign the Declaration. In this Statement of Facts, Mr. Mr. David H. Anderson sets forth that a diligent effort was made to have Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH sign the Declaration, but that Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH repeatedly gave their express oral refusal to sign the Declaration.

**5. Proof that Action is Necessary to Preserve the Rights of the Parties or to Prevent Irreparable Damage**

The present application is in condition for allowance, except for the defective declaration. See the Notice of Allowance mailed June 19, 2003. Phoenix Performance Products, Inc. needs to have the declaration accepted in order to preserve their patent right in the invention.

**6. Inventor's Last Known Address**

The inventor's last known addresses are as follows:

Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH  
22 First Street  
Orangeville, Ontario  
L9W 2C7 CANADA

**7. Fee Payment (37 C.F.R. § 1.17(i))**

☐ A check in the amount of \$130.00 is enclosed.

☐ Please charge Deposit Account No. 02-2448 in the amount of \$0.00. This form is submitted in triplicate.

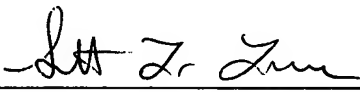
A *bona fide* attempt is being made to comply with the provisions of 37 C.F.R. 1.47.


Pursuant to the provisions of 37 CFR 1.17 and 1.136(a), Applicants respectfully petitions for a one (1) month extension of time for filing a response in connection with the present application. The required fee of \$60.00 is attached hereto.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By   
Scott L. Lowe, #41,458

SLL/RJW:gf 

P.O. Box 747  
Falls Church, VA 22040-0747  
(703) 205-8000

Enclosures: Revised Statement of Facts (with aforementioned  
envelope cover)  
Declaration



Best Available C

U.S. Application No. 10/665,601

**Revised Statement of Facts in Support of Filing**  
**on Behalf of a Non-signing Inventors**

1. I, David H. Anderson, attest that I am an employee of Phoenix Performance Products, Inc. I attest that I have diligently attempted to persuade Mr. Douglas Cudney and Ms. Karen Breitbach, the inventors of U.S. Application No. 10/665,601, to sign a declaration for this application, which is a true copy of earlier filed parent application, Serial No. 09/335,897, filed on June 18, 1999 with the exception of the claims, which differ from the originally filed claims based on the prosecution history of the application. I sent a true copy of this continuation application, Serial No. 10/665,601, to the two named Applicants, Mr. Douglas Cudney and Ms. Karen Breitbach, on ~~March~~ April 28, 2005. To date, I have been unsuccessful in persuading Mr. Douglas Cudney and Ms. Karen Breitbach to sign the declaration.

2. I attest that Mr. Cudney and Ms. Breitbach are no longer employed by, or in a business relationship with, Phoenix Performance Products, Inc.

3. I attest that Mr. Cudney's and Ms. Breitbach's last address, known to the personnel department of Phoenix Performance Products, Inc., is:

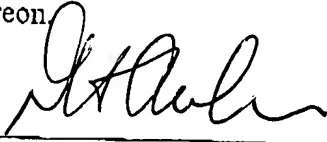
Mr. Douglas J. CUDNEY and Ms. Karen BREITBACH  
22 First Street  
Orangeville, Ontario  
L9W 2C7 CANADA

4. I attest that a true copy of the Continuation Application, Serial No. 10/665,601, a new declaration, and a letter requesting that the declaration be signed was sent to Mr. Cudney's and Ms. Breitbach's last known address on ~~March~~ April 28, 2005, but that a signed declaration was not returned to me or Phoenix Performance Products, Inc.

5. I attest that Mr. Cudney and Ms. Breitbach's last telephone number, known to the personnel department of Phoenix Performance Products, Inc., is: 519 941 7448

6. I attest that I spoke with Mr. Cudney's and Ms. Breitbach's by telephone on the following occasion(s) (AUG. / 2003). However, Mr. Cudney and Ms. Breitbach orally refused to sign the declaration.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

  
\_\_\_\_\_  
Mr. David H. Anderson

\_\_\_\_\_  
Chief Executive Officer

MAY 16/05  
\_\_\_\_\_  
Date

Best Available Copy

STANDARD 1Z 515 092 DL 5612 4893

CHRIS  
PHOENIX PERFORMANCE PRODUCTS INC  
PHONE: 905-696-7965 X24  
6955 COLUMBUS RD  
MISSISSAUGA-MALTON ON L5T1K1

1 LBS 1 OF 1

**SHIP**

**TO**

KAREN BREITBACH DOUGLAS CUDNEY  
519-941-7448  
22 FIRST STREET  
ORANGEVILLE ON L9W 2C7

**SORT SLIC**

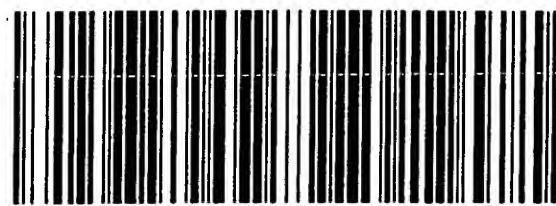
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**SORT TO :**

**BRAMPTON**

**UPS STANDARD**

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BILLING: P/P - PREPAID  
ADULT SIGNATURE REQUIRED - MIN 19  
INVOICE/ORDER #: 1



BOX: 1



STANDARD 1Z 515 092 DL 5612 4893

*Sent:  
April 28/05*

*Returned:  
May 11/05*

**Phoenix**  
Performance Products Inc.  
6955 Columbus Road  
Mississauga, Ontario  
Canada L5T 1K1



1 LBS 1 OF 1

CHRIS  
PHOENIX PERFORMANCE PRODUCTS INC  
PHONE: 905-896-7965 X24  
6955 COLUMBUS RD  
MISSISSAUGA-MILTON ON L5T1K1

5/11/2005 14:30 4509-P504-0034

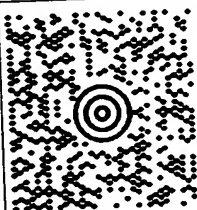
**RETURN TO SHIPPER**

**REASON FOR RETURN:**

COMPANY OR PERSON UNKNOWN, NOT DELIVERED

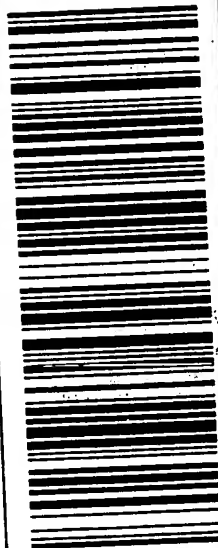
**ORIGINAL RECEIVER:**

KAREN B & DOUGLAS CUDNEY



**UPS STANDARD**

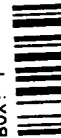
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BILLING: P/P - PREPAID  
ADULT SIGNATURE REQUIRED - MIN 19  
INVOICE/ORDER #



BOX: 1



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STANDARD 1Z 515 092 DL 5612 4893

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1Z  
KSN  
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KSP

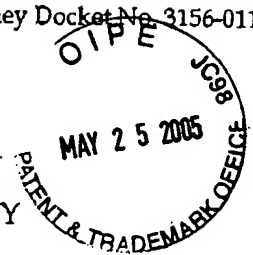


PLEASE NOTE:  
YOU MUST  
COMPLETE THE  
FOLLOWING

# BIRCH, STEWART, KOLASCH & BIRCH, LLP

P.O. Box 747 • Falls Church, Virginia 22040-0747  
Telephone: (703) 205-8000 • Facsimile: (703) 205-8000

## COMBINED DECLARATION AND POWER OF ATTORNEY FOR PATENT AND DESIGN APPLICATIONS



Best Available Copy

I, David H. Anderson, hereby declare that:

The residence, mailing address and citizenship of the named inventors/applicants are stated below.

I am authorized to act on behalf of the following assignee: Phoenix Performance Products, Inc.

And the title of my position with said assignee is: Chief Executive Officer

The entire title to this patent application is vested in said assignee: Phoenix Performance Products, Inc. by an assignment recorded in the USPTO at 010311, Frame 0363.

I believe the applicants named below to be the original and true inventors of the invention which is described and claimed in this continuation application, the specification of which was filed on September 22, 2003 as U.S. Patent Application No. 10/655,601.

As a below named inventor, I hereby declare that: my residence, post office address and citizenship are as stated next to my name; that I verily believe that I am the original, first and sole inventor (if only one inventor is named below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

Insert Title:

CUSHIONING PADS AND THE FORMATION OF CUSHIONING PAD

Fill in Appropriate

the specification of which is attached hereto. If not attached hereto, the application is identified by the attorney docket number as set forth above and/or the following:

Information -  
For Use Without  
Specification  
Attached:

The specification was filed on \_\_\_\_\_ as  
United States Application Number \_\_\_\_\_  
and amended on \_\_\_\_\_ (if applicable) and/or  
the specification was filed on \_\_\_\_\_ as PCT  
International Application Number \_\_\_\_\_; and was  
amended on \_\_\_\_\_ (if applicable)

I hereby state that I have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, §1.56.

I do not know and do not believe the same was ever known or used in the United States of America before my or our invention thereof, or patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application, that the same was not in public use or on sale in the United States of America more than one year prior to this application, that the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representative or assigns more than twelve months (six months for designs) prior to this application, and that no application for patent or inventor's certificate on this invention has been filed in any country foreign to the United States of America prior to this application by me or my legal representatives or assigns, except as follows.

I hereby claim foreign priority benefits under Title 35, United States Code, §119(a)-(d) of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed:

Prior Foreign Application(s)

Priority Claimed

Insert Priority  
Information:  
(if appropriate)

(Number)	(Country)	(Month/Day/Year Filed)	Yes	No
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>

I hereby claim the benefit under Title 35, United States Code, §119(e) of any United States provisional applications(s) listed below.

Insert Provisional  
Application(s):  
(if any)

(Application Number)

(Filing Date)

(Application Number)

(Filing Date)

All Foreign Applications, if any, for any Patent or Inventor's Certificate Filed More than 12 Months (6 Months for Designs) Prior to the Filing Date of This Application:

Insert Requested  
Information:  
(if appropriate)

Country

Application Number

Date of Filing (Month/Day/Year)

I hereby claim the benefit under Title 35, United States Code, §120 of any United States and/or PCT application(s), including for continuation-in-part application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States and/or PCT application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge the duty to disclose information which is material to the patentability as defined in Title 37, Code of Federal Regulations, §1.56 which became available between the filing date of the prior application and the national or PCT international filing date of this application.

Insert Prior U.S.  
Application(s):  
(if any)

(Application Number)

(Filing Date)

(Status - patented, pending, abandoned)

Page 1 of 3

(Application Number)

(Filing Date)

(Status - patented, pending, abandoned)

(Rev. 07/2003)

Attorney Docket No. 3156-0119P

I hereby appoint the practitioners at CUSTOMER NO. 02292 as my attorneys or agents to prosecute this application and/or an international application based on this application and to transact all business in the United States Patent and Trademark Office connected therewith and in connection with the resulting patent based on instructions received from the entity who first sent the application papers to the practitioners, unless the inventor(s) or assignee provides said practitioners with a written notice to the contrary:

Send Correspondence to:

**BIRCH, STEWART, KOLASCH & BIRCH, LLP** or CUSTOMER NO. 02292

P.O. Box 747 • Falls Church, Virginia 22040-0747

Telephone: (703) 205-8000 • Facsimile: (703) 205-8050

PLEASE NOTE:  
YOU MUST  
COMPLETE  
THE  
FOLLOWING:

Full Name of First  
or Sole Inventor:  
Insert Name of  
Inventor  
Insert Date This  
Document is Signed

Insert Residence  
Insert Citizenship

Insert Post Office  
Address

Full Name of Second  
Inventor, if any:  
see above

Full Name of Third  
Inventor, if any:  
see above

GIVEN NAME/FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Douglas J. CUDNEY		
Residence (City, State & Country)	CITIZENSHIP	
Ontario, Canada	Canada	
MAILING ADDRESS (Complete Street Address including City, State & Country)		
22 First Street, Orangeville, Ontario, L9W 2C7 CANADA		
GIVEN NAME/FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Karen BREITBACH		
Residence (City, State & Country)	CITIZENSHIP	
22 First Street, Orangeville, Ontario, L9W 2C7 CANADA		
MAILING ADDRESS (Complete Street Address including City, State & Country)		
GIVEN NAME/FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Residence (City, State & Country)	CITIZENSHIP	
MAILING ADDRESS (Complete Street Address including City, State & Country)		

Best Available Copy

Full Name of Fourth  
Inventor, if any:  
see above

GIVEN NAME/FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Residence (City, State & Country)	CITIZENSHIP	
MAILING ADDRESS (Complete Street Address including City, State & Country)		

GIVEN NAME/FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Residence (City, State & Country)	CITIZENSHIP	
MAILING ADDRESS (Complete Street Address including City, State & Country)		

GIVEN NAME/FAMILY NAME	INVENTOR'S SIGNATURE	DATE*
Residence (City, State & Country)	CITIZENSHIP	
MAILING ADDRESS (Complete Street Address including City, State & Country)		

Full Name of Fifth  
Inventor, if any:  
see above

Full Name of Sixth  
Inventor, if any:  
see above

Page 2 of 2  
(Rev. 07/2003)

\*DATE OF SIGNATURE



Signature

MAY 16/05

Date

David H. Anderson

5 Commerce Road  
Orangeville, Ontario, Canada L9W3X5

3156-110



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APRIL 03, 2000

BIRCH, STEWART, KOLASCH & BIRCH, LLP  
JAMES M. SLATTERY  
P.O. BOX 747  
FALLS CHURCH, VA 22040-0747

PTAS



\*101288089A\*

# CORRECTED NOTICE

## UNITED STATES PATENT AND TRADEMARK OFFICE NOTICE OF RECORDATION OF ASSIGNMENT DOCUMENT

THE ENCLOSED DOCUMENT HAS BEEN RECORDED BY THE ASSIGNMENT DIVISION OF THE U.S. PATENT AND TRADEMARK OFFICE. A COMPLETE MICROFILM COPY IS AVAILABLE AT THE ASSIGNMENT SEARCH ROOM ON THE REEL AND FRAME NUMBER REFERENCED BELOW.

PLEASE REVIEW ALL INFORMATION CONTAINED ON THIS NOTICE. THE INFORMATION CONTAINED ON THIS RECORDATION NOTICE REFLECTS THE DATA PRESENT IN THE PATENT AND TRADEMARK ASSIGNMENT SYSTEM. IF YOU SHOULD FIND ANY ERRORS OR HAVE QUESTIONS CONCERNING THIS NOTICE, YOU MAY CONTACT THE EMPLOYEE WHOSE NAME APPEARS ON THIS NOTICE AT 703-308-9723. PLEASE SEND REQUEST FOR CORRECTION TO: U.S. PATENT AND TRADEMARK OFFICE, ASSIGNMENT DIVISION, BOX ASSIGNMENTS, CG-4, 1213 JEFFERSON DAVIS HWY, SUITE 320, WASHINGTON, D.C. 20231.

RECORDATION DATE: 10/14/1999

REEL/FRAME: 010311/0363  
NUMBER OF PAGES: 3

BRIEF: ASSIGNMENT OF ASSIGNOR'S INTEREST (SEE DOCUMENT FOR DETAILS)..

ASSIGNOR:  
CUDNEY, DOUGLAS J.

DOC DATE: 09/30/1999

ASSIGNOR:  
BREITBACH, KAREN

DOC DATE: 09/30/1999

ASSIGNEE:  
PHOENIX PERFORMANCE PRODUCTS, INC.  
5 COMMERCE ROAD  
ORANGEVILLE, CANADA L9W 3X5

SERIAL NUMBER: 09335897  
PATENT NUMBER:

FILING DATE: 06/18/1999  
ISSUE DATE:

DOROTHY RILEY, PARALEGAL  
ASSIGNMENT DIVISION  
OFFICE OF PUBLIC RECORDS

Best Available

## BIRCH, STEWART, KOLASCH &amp; BIRCH, LLP

UNITED STATES PATENT RIGHTS, OR  
UNITED STATES PLUS ALL FOREIGN PATENT RIGHTS

## ASSIGNMENT

Application No. 09/335,897Filed June 18, 1999Insert Name(s)  
of Inventor(s)WHEREAS, Douglas J. CUDNEY and Karen BREITBACH

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(hereinafter designated as the undersigned) has (have) invented certain new and useful improvements in

Insert Title  
of InventionCUSHIONING PADS AND THE FORMATION OF CUSHIONING PADS

for which an application for Letters Patent of the United States of America has been executed by the undersigned (except in the case of a provisional application).

Insert Date  
of Signing of  
Applicationon September 30, 1999; andInsert Name  
of AssigneeWHEREAS, Phoenix Performance Products, Inc.Insert Address  
of Assigneeof 5 Commerce Road, Orangeville, ON L9W 3X5, Canadaits heirs, successors, legal representatives and assigns (hereinafter designated as the Assignee) is desirous of acquiring the entire right, title and interest in and to said invention and in and to any Letters Patent(s) that may be granted therefor in the United States of America and  
☒ in any foreign countries.CHECK BOX  
IF APPROPRIATE

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) to the undersigned in hand paid, the receipt of which is hereby acknowledged, and other good and valuable consideration, the undersigned has (have) sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee the full and exclusive right to the said invention in the United States of America, its territories, dependencies and possessions and the entire right, title and interest in and to any and all Letters Patent(s) which may be granted therefor in the United States of America, its territories, dependencies and possessions, and if the box above is designated, in any and all foreign countries;

and to any and all divisions, reissues, continuations, conversions and extensions thereof for the full term or terms for which the same may be granted.

The undersigned agree(s) to execute all papers necessary in connection with this application and any continuing, divisional, conversion or reissue applications thereof and also to execute separate assignments in connection with such applications as the Assignee may deem necessary or expedient.

The undersigned agree (s) to execute all papers necessary in connection with any interference which may be declared concerning this application or continuation, division, conversion or reissue thereof or Letter Patent(s) or reissue patent issued thereon and to cooperate with the Assignee in every way possible in obtaining and producing evidence and proceeding with such interference.

The undersigned agree(s) to execute all papers and documents and to perform any act which may be necessary in connection with claims or provisions of the International Convention for the Protection of Industrial Property or similar agreements.

The undersigned agree(s) to perform all affirmative acts which may be necessary to obtain a grant of a valid United States of America patent(s) or a grant of a valid United States of America and any foreign patent(s) to the Assignee and to vest all rights therein hereby conveyed to said Assignee as fully and entirely as the same would have been held by the undersigned if this Assignment and sale had not been made.

The undersigned hereby authorize(s) and request(s) the Patent and Trademark Office Officials in the United States of America and in any foreign countries to issue any and all Letters Patents resulting from said application or any continuing, divisional conversion or reissue applications thereof to the said Assignee, as Assignee of the entire interest, and hereby covenants that he has (they have) the full right to convey the entire interest herein assigned, and that he has (they have) not executed, and will not execute, any agreement in conflict herewith.

The undersigned hereby grant(s) the law firm of Birch, Stewart, Kolasch & Birch, LLP the power to insert on this Assignment any further identification which may be necessary or desirable in order to comply with the rules of the U.S. Patent and Trademark Office for recordation of this document.

The undersigned hereby covenant(s) that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

In witness whereof, executed by the undersigned on the date(s) opposite the undersigned name(s).

Date SEPT. 30 / 99

Name of Inventor X [Signature]  
(signature)

Date Sept 30 / 99

Name of Inventor X [Signature]  
(signature)

Date \_\_\_\_\_

Name of Inventor \_\_\_\_\_  
(signature)

Date \_\_\_\_\_

Name of Inventor \_\_\_\_\_  
(signature)

Date \_\_\_\_\_

Name of Inventor \_\_\_\_\_  
(signature)

Date \_\_\_\_\_

Name of Inventor \_\_\_\_\_  
(signature)